



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

RAFAEL MENDOZA ESCALANTE,
Plaintiff,

vs.

M.B. ESTES and C.H. FLAVELL,
Defendants.

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CIVIL ACTION NO. 3:06-2828-HFF-JRM

ORDER ADOPTING THE REPORT AND RECOMMENDATION OF THE
MAGISTRATE JUDGE AND DISMISSING THE ACTION PURSUANT TO RULE 41(b) OF
THE FEDERAL RULES OF CIVIL PROCEDURE

This case was filed as a Section 1983 action. Plaintiff is proceeding pro se. The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge suggesting that the action be dismissed pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. The Report is made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a de novo determination of those portions of the Report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on February 1, 2007. Plaintiff failed to file any objections to the Report.* In the absence of objections, the Court is not required to give any explanation for adopting the recommendation. *Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983). Moreover, a failure to object waives appellate review. *Wright v. Collins*, 766 F.2d 841, 845-46 (4th Cir. 1985).

After a thorough review of the Report and the record in this case pursuant to the standards set forth above, the Court adopts the Report and incorporates it herein. Therefore, it is the judgment of this Court that this case must be **DISMISSED** pursuant to Rule 41(b) of the Federal Rules of Civil Procedure.

IT IS SO ORDERED.

Signed this 21st day of February, 2007, in Spartanburg, South Carolina.

s/ Henry F. Floyd

 HENRY F. FLOYD
 UNITED STATES DISTRICT JUDGE

NOTICE OF RIGHT TO APPEAL

Plaintiff is hereby notified of the right to appeal this Order within thirty (30) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.

*The Court notes that Plaintiff is likely unaware of the Magistrate Judge's Report as it appears that mail from the Court to Plaintiff has been returned as undeliverable. In light of present posture of the case, however, and the fact that Plaintiff has failed to keep the Court apprised of his current mailing address, although directed to do so by Order filed October 18, 2006, the Court has no option but to dispose of the action.